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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,910

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Hikari Kawata

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06/22/2006

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/669,910

Applicant(s)

KAWATA ET AL.

Examiner

Michele Kidwell

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: lines 4 – 5 recite “said tape fastener”, which lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 – 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 has been amended to recite a pad according to claims 2, 1,... It is what claim 3 is intended to depend upon.

Where the metes and bounds of a claim are indefinite, it is improper to base a rejection on speculation as to the meaning of the claim. In re Steele, 305 F.2d 858, 134 USPQ 292 (CCPA 1962). Specifically, unclear claims are indefinite, not obvious. In re Wilson, 424 F.2d 1382, 185 USPQ 494 (CCPA 1970).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 – 4 and 6 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Burrell (US 5,651,779).

With respect to claim 1, Burrell discloses a disposable body fluid absorbent pad comprising a top surface facing a wearer's body, a back surface facing away from said wearer's body, a liquid-absorbent core interposed between said top and back surfaces having longitudinally opposite end margin portions extending in a transverse direction and defining peripheral longitudinal edge portions of the liquid absorbent core and transversely opposite side edge margin portions extending in a longitudinal direction and defining peripheral transverse edge portions of the liquid absorbent core (col. 6, lines 13 – 26), a front region destined to cover a wearer's belly, a rear region destined to cover a wearer's hip and an intermediate region destined to cover a wearer's crotch when said pad is put on said wearer's body (figures 1 – 3), a strap extending longitudinally outward from the front region for pulling said pad in said longitudinal direction, said strap having inner fixed portions lying on and extending along a length of said side edge margin portions and secured to said pad on a surface facing said wearer's body and a hand-grip extending between said inner fixed portions as set forth in figure 5.

With reference to claim 3, Burrell discloses a pad wherein the inner fixed portion of the straps extend from the end margin of the front region toward the end margin of the rear region along the side edge margins as set forth in figures 3 and 7.

With respect to claim 4, Burrell discloses a pad wherein elastic members extending in the side edge margins of the pad in the longitudinal direction are attached to the front, rear and intermediate regions, at least to the intermediate region of the pad so that the elastic members are contractible in the longitudinal direction and the inner fixed portions of the straps shrink in the longitudinal direction as the elastic members contract as set forth in col. 5, lines 21 – 24. Burrell discloses that the leg openings may be fitted with elastic trim around the edges which is well known in the art. The elastic trim is inherently contractible in the longitudinal direction which would ultimately cause the straps to shrink the longitudinal direction as the elastic members contract.

As to claim 6, Burrell discloses a pad wherein said top and back surfaces are defined by a liquid-pervious topsheet and a liquid-impervious backsheet, respectively as set forth in col. 6, lines 13 – 26.

With reference to claims 7 and 8, see figure 2.

As to claim 9, Burrell discloses a pad that is provided in said rear region with a tape fastener having a proximal end fixed to said pad on said surface facing away from said wearer's body in said rear region and a distal end extending outward from said end margin of said rear region in said longitudinal direction and adapted to be releasably attached to said pad on

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said surface facing away from said wearer's body as set forth in col. 8, lines 57 – 64 and in figure 6.

With reference to claim 10, Burrell discloses a pad wherein said intermediate region of said pad is folded in said longitudinal direction with said topsheet inside so that said front and rear regions may be placed upon each other and then said distal end of said tape fastener is releasably attached to said pad on said surface facing away from said wearer's body in said front region so as to maintain said pad in a folded state as set forth in figure 5.

Claims 1, 3, 5 and 7 – 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard (US 6,368,313).

With respect to claim 1, Howard discloses a disposable body fluid absorbent pad comprising a top surface facing a wearer's body (top outer surface of absorbent), a back surface facing away from said wearer's body and a liquid-absorbent core being contoured by longitudinally opposite end margins extending in a transverse direction and transversely opposite side edge margins extending in a longitudinal direction and being relatively large in said longitudinal direction (col. 5, lines 1 – 10), said disposable body fluid absorbent pad further comprising: said pad having a front region destined to cover a wearer's belly, a rear region destined to cover a wearer's hip and an intermediate region destined to cover a wearer's crotch when said pad is put on said wearer's body (figure 1), said pad including a strap (60) adapted to pull said pad in said longitudinal direction and said strap having inner fixed portions lying on said side edge

margins and secured to said pad on a surface facing said wearer's body and a hand-grip extending between said inner fixed portions as set forth in figures 2 and 5 – 8.

As to claim 3, Howard discloses a pad wherein the inner fixed portion of the straps extend from the end margin of the front region toward the end margin of the rear region along the side edge margins as set forth in figures 1 and 6.

Regarding claim 5, Howard discloses a pad wherein the straps are elastically stretchable (col. 4, line 59) and the inner fixed portions of the straps are secured to the pad on a surface facing the wearer's body so that the inner fixed portions are contractible as set forth in figure 1.

With reference to claims 7 and 8, see figures 2 and 4.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hlusko (US 4,745,926).

With respect to claim 1, Hlusko discloses a disposable body fluid absorbent pad comprising a top surface facing a wearer's body and a back surface facing away from said wearer's body and being contoured by longitudinally opposite end margins extending in a transverse direction and transversely opposite side edge margins

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extending in a longitudinal direction and being relatively large in said longitudinal direction, said disposable body fluid absorbent pad further comprising: said pad having a front region destined to cover a wearer's belly, a rear region destined to cover a wearer's hip and an intermediate region destined to cover a wearer's crotch when said pad is put on said wearer's body (figure 4), said pad including a strap adapted to pull said pad in said longitudinal direction and said strap having inner fixed portions lying on said side edge margins and secured to said pad on a surface facing said wearer's body and a hand-grip extending between said inner fixed portions as set forth in figure 4.

The difference between Hlusko and claim 1 is the provision that the pad comprises a liquid-absorbent core interposed between the top and back surface.

While Hlusko does not explicitly teach a liquid absorbent core interposed between the top and back surface, it would be obvious to one of ordinary skill in the art to provide this modification because Hlusko teaches that the pad is patterned after a diaper with straps attached (col. 2, lines 40 – 42). It is well known in the art that conventional diapers include a topsheet, a backsheet and an absorbent core therebetween.

As to claim 2, Hlusko teaches a pad wherein said strap comprises a first strap attached to one of said side edge margins so as to extend outward from said end margin of said front region in said longitudinal direction and a second strap is attached to said other side edge margin so as to extend outward from said end margin of said front region in said longitudinal direction, said first strap having an inner fixed portion lying on one of said side edge margins and



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secured to said pad on said surface facing said wearer's body, an outer fixed portion lying on said other side edge margin and secured to said pad on said surface facing away from said wearer's body and a hand-grip extending between said inner fixed portion and said outer fixed portion and said second strap having an inner fixed portion lying on said other side edge margin and secured to said pad on said surface facing said wearer's body, an outer fixed portion lying on said other side edge margin and secured to said pad on said surface facing away from said wearer's body and a hand-grip extending between said inner fixed portion and said outer fixed portion as set forth in figure 4.

Regarding claim 3, Hlusko teaches a pad wherein the inner fixed portion of the straps extend from the end margin of the front region toward the end margin of the rear region along the side edge margins as set forth in see figure 4.

### ***Response to Arguments***

Applicant's arguments filed April 5, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's argument that there are no straps in Burrell that extend longitudinally outward from the front region of the panty liner that have inner fixed portions that extend along a length of the side edge margin portions of the panty liner, the examiner disagrees. Burrell discloses multiple straps (36, 38) that extend longitudinally outward from the front region. These straps also have inner fixed portions

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that lie on and extend along a length of the side edge margin portions (40) as shown in figure 3.

With respect to the applicant's argument that Howard does not even have side edge margin portions that extend in a longitudinal direction and define peripheral transverse edge portion of the liquid absorbent core, the examiner disagrees.

The applicant's arguments are not commensurate with the scope of the claims. The term "portions" is used throughout the claim in an attempt to refer to specific areas, however, the examiner contends that the term "portions" can include any or all parts of an area including those shown and referred to in the foregoing rejection of the claims using the Burrell, Howard and Hlusko references.

In response to applicant's argument that the references are not designed or intended to be pulled in the manner of the applicant's invention, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michele Kidwell  
Primary Examiner  
Art Unit 3761